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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,967	02/25/2002	Paul Kadlec	1074-045-PWH	3047
21034	7590	03/01/2004	EXAMINER	
IPSOLON LLP 805 SW BROADWAY, #2740 PORTLAND, OR 97205			CRUZ, MAGDA	
			ART UNIT	PAPER NUMBER
			2851	

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/936,967

Applicant(s)

KADLEC, PAUL

Examiner

Magda Cruz

Art Unit

2851

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-18 and 20-25 is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-6 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Wang et al. (US Patent Number 6,473,179 B1) discloses an integrated photoelastic modulator (24) and diagnostic system (50) comprising: a photoelastic modulator (24) including an optical element (25) having a primary aperture through which primary light directed (column 3, lines 18-20), and a diagnostic system (50) including a diagnostic light source (76) for directing through the optical element diagnostic light (74) that is distinct from the primary light, wherein the diagnostic light source (76) is configured so that the diagnostic light (Bi) is directed through the optical element (76) at a location remote from the primary aperture; wherein the photoelastic modulator (24) is operable to provide retardance characteristics in primary light that is directed through the optical element, and wherein the diagnostic system includes processing means for determining at least one retardance characteristic provided by the photoelastic modulator (column 3, lines 42-51); including display means (92) for displaying the retardance characteristic determined by the processing means (90); including feedback means for converting signals representing the determined retardance characteristic into control signals (column 6, lines 31-36) for the photoelastic modulator (84); wherein the photoelastic modulator (24) is operable to provide retardance characteristics in primary light (Bi) that is directed through the optical element (30), and wherein the diagnostic system includes processing means for determining a retardance characteristic of the diagnostic light and using the retardance characteristic of the diagnostic light to calculate a retardance characteristic in the primary light that is provided by the photoelastic modulator (column 5, lines 17-23).

***Allowable Subject Matter***

3. Claims 7-18 and 20-25 allowed.
4. The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not teach an integrated photoelectric modulator and diagnostic system, comprising in combination with the additionally recited elements, a method of operating said photoelastic modulator that is operable for vibrating an optical element to impart retardance characteristics in a primary light beam that is directed through the optical element; a source of diagnostic light arranged to transmit diagnostic light through the optical element at a second location that is spaced from the first location so that the optical element imparts retardance characteristics that are different from the retardance characteristics imparted in the primary light beam and a detector arranged for detecting at least a portion of the diagnostic light transmitted through the second location of optical element; processing means for extrapolating from the detected diagnostic light a retardance characteristic imparted by the photoelastic modulator to the primary light.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Oakberg (US Patent Number 5,652,673) discloses an elimination of modulated interference effects in photoelastic modulators.

Siahpoushan et al. (US Patent Number 5,886,810) teaches a mounting apparatus for an optical assembly of a photoelastic modulator.

Wang et al. (US 2003/0020911 A1) shows a practical system and method for precisely measuring retardance and fast axis orientation.


6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Magda Cruz whose telephone number is (571)272-2114. The examiner can normally be reached on Monday through Thursday 8:00-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams can be reached on (571)272-2851. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RUSSELL ADAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2300

Magda Cruz  
Patent Examiner  
February 9, 2004